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KAP-101-A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant: LYAPKO, Nikolai Grigorievich
Serial Number: 10/031/161
Filed: 05/20/2002
Examiner: Quang D. Thanh
Group Art Unit: 3764
Title: APPLICATOR FOR USE IN REFLEXOTHERAPY

REPLY BRIEF

By Fax to:

COMMISSIONER FOR PATENTS
571-273-8300

Sir:

This is in response to the Examiner's Answer mailed February 24, 2006 with respect to the new points raised therein. As used herein, the terms:

"the last OA" refers to the Office Action mailed June 7, 2005;

"AB" refers to the Appeal Brief filed January 23, 2006; and

"EA" refers to the Examiner's Answer mailed February 24, 2006.

1. The EA states: "Re claims 19, 21 and 23, Gelfer teaches a body treatment pad having a flexible base member 10 made of plastic material and a plurality of needles 19 ('rigid needle-like protuberance as disclosed in col. 1, line 14-16) each having a thickened end and a sharpened tip 23 (fig. 6) being tapered from the thickened end toward the sharpened end (fig. 6)." Underscoring added for emphasis.

However, for completeness sake, Gelfer, column 1, lines 14-18, states: "The invention concerns a flexible pad having a large multiplicity of rigid needle-like protuberances or sharpened knife-like protuberances adapted to penetrate or depress a person's skin when the pad is pressed against the person's body."

First, it is respectfully submitted that appellant claims needles embedded in the elastic base member, and not "needle-like protuberances."

Secondly, the EA concedes that Gelfer does not disclose the thickened end of the needle being embedded inside of the base member.

Furthermore, when one carefully inspects Gelfer's alleged "needles" 19, one discovers that they are not needles, but rather are elongated bars each having a flat side surface 20 and converging side surfaces 22.

Indeed, "each bar 19 has a length dimension that is approximately three times its transverse width dimension. Typically the length of each bar 19 can be about one and one half inch or less. The height dimension of each triangular cross-sectioned bar 19 can be about one fourth inch." Gelfer, column 4, lines 51-56.

Appellant respectfully submits that the Gelfer bar 19 which is elongated parallel to the major surface of the Gelfer treatment pad is not a needle which is defined as "a fine, sharp projection, as a spine of a sea urchin or a crystal, or a sharp, pointed instrument used in engraving" as defined in the *American Heritage Dictionary*.

In support of this, appellant also respectfully submits that the Gelfer bar 19 is not a needle because its elongated knife-like end edge is elongated parallel to the Gelfer treatment pad, and such "knife-like end edge has an included angle of approximately forty degrees." Gelfer, column 6, lines 42-44.

Also, appellant respectfully submits that Gelfer's statement in the "Prior Developments" section of his patent referring to "rigid needle-like protuberances or sharpened knife-like protuberances" may be referring to protuberances 14 and 15 as the "needle-like protuberances", and may be referring to the bars 19 as "sharpened knife-like protuberances." Gelfer, column 1, lines

13-16. And indeed, Gelfer itself refers to bar 19 as a "block." Gelfer, column 4, lines 43-44; column 6, line 37.

2. With regard to the rejection of claims 19, 21, 23, 27, 29 and 31 under 35 USC 103 over Gelfer in view of Leupold, the Examiner disagrees with appellant's argument that the Gelfer bar 19 is not a needle. See EA, paragraph bridging pages 5 and 6.

In response thereto, appellant respectfully incorporates by reference herein all of the arguments and distinctions set forth hereinabove and in the AB.

3. Appellant respectfully submits that the last OA confuses flexibility with elasticity. See the last OA, page 3.

The last OA contends that because Gelfer states that the backing sheet has sufficient flexibility, it therefore has a certain degree of elasticity. In contrast, appellant respectfully requests that the Board take judicial notice of the scientific fact that just because an article is flexible, does not mean that it necessarily is elastic.

4. The EA at page 6 attempts to belatedly repair the aforementioned unscientific conclusion set forth in the last OA regarding flexibility and elasticity.

The EA at page 6 states that since Gelfer teaches that sheet 10 can be canvas, or heavy cloth, or a thin sheet of nonwoven plastic material, therefore according to *Hawley's Condensed Chemical Dictionary*, 14th Edition, "nonwoven fabric" is defined as a fabric made from thermoplastic synthetic fiber and the sheets thus formed can be pressed together to form mats of good elastic recovery and thus Gelfer's thin sheet of non-woven plastic material is elastic. Appellant respectfully disagrees.

Further, the Hawley's dictionary does not define "non-woven plastic material" which is stated in Gelfer, but rather defines the term "nonwoven fabric."

Secondly, Gelfer refers to a thin sheet of nonwoven plastic material, and does not refer to the term nonwoven fabric.

Furthermore, the definition proffered belatedly by the EA refers to sheets that can be pressed together to form porous mats of high absorbtivity with good elastic recovery on deformation. In contrast, Gelfer does not disclose a plurality of sheets that are pressed together, but rather merely

discloses "a thin sheet of non-woven plastic material."

5. Moreover, appellant's claims 19, 21 and 23 require the thickened ends of needles "being embedded in said elastic base member," and appellant's claims 27, 29 and 31 require "an elastic base member consisting of two layers joined together . . . said sharpened end of each needle passing through an upper layer of said two layers of said elastic base member and protruding therefrom, and said squeezed thickened end of each needle being disposed between said two layers and joined together with said two layers . . . and said squeezed thickened ends being fastened substantially in an area of joint between said two layers," and none of these features are disclosed or made obvious by the cited references, taken singly or in combination.

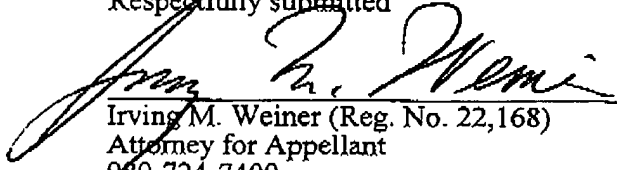
Therefore, appellant respectfully submits that a prima facie case of obviousness has not been made out. Appellant respectfully submits that the PTO bears the burden of establishing a case of prima facie obviousness, and in this case the PTO has not done so. In further support of this, attention is directed to *In re Dembiccak*, 50 USPQ2d 1614 (Fed Cir 1999), wherein the entire Section II of this CAFC holding is applicable to the present appeal.

Favorable consideration and reversal of the final rejection is earnestly solicited.

Respectfully submitted

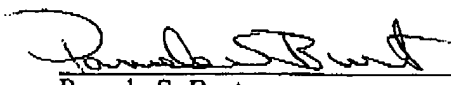
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Weiner & Burt, P.C.
635 N. US-23
P.O. Box 186
Harrisville, MI 48740


Irving M. Weiner (Reg. No. 22,168)
Attorney for Appellant
989-724-7400
Fax: 989-724-7100
email: iw@wabpc.com

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I hereby certify that the foregoing Reply Brief was sent by facsimile to: Commissioner for Patents at 571-273-8300 on April 24, 2006.


Pamela S. Burt